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ABSTRACT

This summary of California's Collective Bargaining Act outlines the essential points of this state law, including the processes to be employed for bargaining unit determination, definition and settlement of unfair labor practices, ascertainment of the scope of negotiations, certification of exclusive bargaining representatives, arbitration, and settlement of impasses. The Educational Employment Relations Board (PERB), consisting of three members appointed by the governor, is charged with administering the act. This act is intended to grant recognition to only one employee organization as the exclusive representative of the employees in a given unit. It is also intended to give certified employees a voice in formulating educational policy. (DS)

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THE A.B.C.'S OF THE C.B.A. (COLLECTIVE BARGAINING ACT)
Government Code Sections 3540, etc.

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Prepared by the
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EA 008 303

THE A.B.C.'S OF THE C.B.A. (COLLECTIVE BARGAINING ACT)
Government Code Sections 3540, etc.

I. SCOPE (Government Code Section 3540.1K)

A. Covers all employees, certificated and classified.

B. Covers schools K - 14.

C. Covers employees of the County Superintendent of Schools.

D. Educational Employment Relations Board becomes operative January 1, 1976.

Unit Determination Sections become operative April 1, 1976.

Balance of the Act becomes operative July 1, 1976.

II. INTENT (Government Code Section 3540)

A. It is the intent of the act to grant recognition to only one employee organization as the exclusive representative of employees in a given unit. This differs markedly from the Winton Act which created a Certificated Employees Council in which all organizations were recognized and seated in proportion to their membership.

B. It is also the expressed intent of the act to afford certificated employees a voice in the formulation of educational policy.

C. Existing laws regarding tenure, civil service, and academic senate functions in community colleges are expressly not affected.

(NOTE: It is important that the intent of the act be clearly understood since the powers of the Educational Employment Relations Board, hereinafter referred to as the EERB, are derived from the intent of the statute.)

III. DEFINITIONS OF TERMS USED IN THE ACT (Government Code Section 3540.1)

BOARD:	Educational Employment Relations Board (EERB)
CERTIFIED ORGANIZATION: RECOGNIZED ORGANIZATION: EXCLUSIVE REPRESENTATIVE:	Exclusive representative of public school employee, in an appropriate certified unit, arrived at by the procedure set up in the act, Government Code Section 3544.
SCHOOL EMPLOYER:	A. Governing Board of a district. B. A school district. C. A County Board of Education. D. A County Superintendent of Schools.
SCHOOL EMPLOYEE:	Any person employed by a school employer unless: 1. They are elected. 2. They are appointed by the Governor. 3. They are management employees. 4. They are confidential employees. (NOTE: Supervisory employees are not exempt employees. Distinguishing between management employees and supervisory employees will be a trouble area for school employers.)
CONFIDENTIAL EMPLOYEE:	An employee privy to information relating to his employer's employee-employer relations. While confidential employees may not be represented by an exclusive bargaining representative (Government Code Section 3543.4), the employee may nevertheless join an organization composed solely of his or her peers.
MANAGEMENT EMPLOYEE:	One who is in a position having significant responsibility for formulating district policies or administering district programs. While management employees may not be represented by an exclusive bargaining representative (Government Code Section 3543.4), the employee may join an organization consisting exclusively of persons designated management employees. Designation made by employer, subject to review by EERB.
SUPERVISORY EMPLOYEE:	Any employee, regardless of job description, who has authority, on behalf of the employer, to exercise his own independent judgment and hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, and discipline other employees, or to direct them or adjust their grievances.

EMPLOYEE ORGANIZATION: An organization whose members include public school employees and whose PRIMARY purposes include representing those members in their relationship with their public school employer.

MEETING AND NEGOTIATING: Meeting, conferring, negotiating, discussing, in a "good faith" effort to reach agreement within the permitted scope. (See Government Code Section 3543.2.)

Upon request of either party, the agreement is incorporated into a written document of agreement binding both parties for a period agreed upon, not to exceed three (3) years. Binding arbitration is one of the permitted options (see Government Code Section 3540.1h) in enforcing the terms of this written agreement.

IMPASSE: Parties to a dispute, within the scope of their representation, reach a point in their meeting and negotiating where future meetings would be FUTILE.

ORGANIZATIONAL SECURITY: A means whereby an employee organization which assumes the exclusive representative role achieves financial support from employees in the unit for its efforts. During the meet and negotiate procedure, the parties, if they desire organizational security, may choose between two forms. They may select the form which provides that:

a. The employee may decide whether or not to join an organization, but if he does decide to join, he must remain a member for the duration of the written contract (or give notice within thirty (30) days following its expiration that he wishes to resign from membership).

or

b. The employees may elect an arrangement that requires an employee, AS A CONDITION OF CONTINUED EMPLOYMENT, either to join the certified organization or pay that organization a "service fee." The service fee, if plan (b) is selected, may include the standard initiation fee, plus periodic dues, plus general assessments of the organization for the duration of the agreement, or three (3) years, whichever is less. The service fee may not exceed the total of items listed.

IV. WHO ADMINISTERS THE ACT (Functions of the EERB, Government Code Section 3541)

A. The act creates an EDUCATIONAL EMPLOYMENT RELATIONS BOARD (EERB).

B. This Board consists of three members, appointed by the Governor with the advice and consent of the Senate.

C. It is independent of any other state agency.

D. Its members are appointed for five-year terms (after initial staggered appointments).

E. The Board's Chairman is selected by the Governor.

F. Board members cannot hold any other public office in the state.

G. The Board, in turn, may appoint an executive director and such other employees as it deems necessary for the performance of Board duties.

H. They may hire general legal counsel, who may act independently of the Attorney General's office.

Duties of the Board:

A. To determine in disputed cases appropriate bargaining units. To approve bargaining units when not disputed.

B. To determine in disputed cases whether or not a particular item is within the scope of representation.

C. To investigate charges of unfair practices and other alleged violations of the act.

D. To arrange for and supervise representative elections by secret ballot and certify results thereof.

E. To decide contested matters involving recognition, certification, de-certification, and the effect of mergers of units.

F. To establish a list of experienced mediators, arbitrators, and fact-finders (none of whom may be members of the staff of the Board).

G. To engage in studies, research and training programs regarding labor negotiations.

H. To promulgate rules and regulations:

1. for reviewing proposed changes in unit determinations,
2. for carrying out the intent of the act.

I. To hold hearings, subpoena witnesses, books, etc. relating to matters within their jurisdiction.

J. To bring court action to enforce Board decisions.

V. UNIT DETERMINATION (Government Code Section 3545)

Certificated: All classroom teachers who are employed by the school employer must be in the same unit, except management employees, supervisory employees, and confidential employees.

Others: All other units are based on a community of interest and established practices, and the effect of the size of the unit on the efficient operation of the district.

In case of a dispute involving unit determination, the EERB has the right to determine the appropriate unit.

There shall not be certificated and classified employees in the same unit.

Judicial Review of Unit Determination (Government Code Section 3542)

A. There is no entitlement to judicial review of a unit determination unless the Board, in its response to a petition of either the employer or the employee, agrees that case is of "special importance" and joins in the suit. (This will be a trouble area. "Special importance" will need to be defined.)

or

B. Unless the claim of "improper unit determination" is a defense to an unfair practice complaint.

Things to be Considered in Determining Units

The determination of a unit, that is, the structure of the unit, is a core issue to negotiating. In private industry, from which much of the public sector's negotiating law is taken, unit is a shortened form of "unit appropriate for collective bargaining." Such a unit is said to be appropriate if it includes all employees sharing a community of interest which can be served through collective bargaining.

It is vital that in unit determination care be exercised to include all employees who share a community of interest with others in the unit, and that employees who do not share such a community of interest be excluded.

Whenever bargaining takes place without a prior determination by the EERB, the parties must agree in advance upon the unit to be covered by any agreement they negotiate. Because the law itself encourages voluntary settlement of disputes, in private industry the National Labor Relations Board has gone quite far in accepting as lawful negotiating units established by consensual agreement of the parties. The same is quite likely to be true under the existing law in Californi

VI. UNFAIR LABOR PRACTICES (Government Code Section 3541.5)

(The unfair practices are defined in Government Code Sections 3543.5 and 3543.6.)

A. Jurisdiction Over Unfair Labor Practice Claims

The EERB has exclusive jurisdiction to make the initial determination as to whether or not charges of unfair practices are justified, and if they are, what the remedy should be.

The EERB is empowered to devise and promulgate procedures to investigate, hear, and decide cases relating to unfair practices. Unless the charges do involve allegations of unfair labor practices, the Board HAS NO AUTHORITY TO ISSUE A COMPLAINT OR TO ENFORCE the collective bargaining agreement.

B. Who May Bring Charges?

1. Any employee, employee organization, or employer.
2. Within six (6) months after its occurrence.
3. The complaintant must first exhaust all grievance machinery that has been set up in the collective bargaining agreement, if one exists. The agreement procedures may be waived, however, if the charging party can demonstrate that using those procedures would be "futile." (Determining what is "futile" will probably be another trouble area.)
4. While using the grievance procedure, the six (6) months statute of limitations is tolled.

(NOTE: The EERB has the discretion to review the settlement reached in a grievance proceeding to determine if it meets the intent of the legislature in enacting the law. If the procedure selected as a result of meet and negotiation provides for a binding arbitration award, that award is likewise subject to review at the discretion of the board. If the EERB finds the settlement reached in the grievance process is repugnant to the intent of the legislation, it may issue a complaint in accordance with its rules and regulations and make a determination of the charge itself, deciding the issue of an alleged unfair labor practice on its own merits.)

C. Judicial Review of an Unfair Labor Practices Complaint (Government Code Section 3542)

1. Any party to an unfair labor practice charge who feels aggrieved by a decision or order of the EERB (unless that decision was a determination not to review a charge of unfair labor practice), has the right to seek review in a court of competent jurisdiction.
2. The substantial evidence test is declared to be the standard of review. (This will be a trouble area since the court has held that a "complete review of the evidence" is the standard of review in cases involving vested rights.)
3. The EERB, on the other hand, may seek court enforcement of its decision.

VII. RIGHTS AND OBLIGATIONS OF PUBLIC SCHOOL EMPLOYEES UNDER COLLECTIVE BARGAINING (Government Code Section 3543)

A. Public school employees have the right to:

1. Form, join and participate in the activities of employee organizations of their own choosing.

2. To refuse to join or participate in such activities.

3. To represent themselves individually in their employment relations with their employer until such time as an organization is recognized or certified as the exclusive bargaining agent of the unit of which they are a part. (Once a unit decides to select an exclusive representative, and they may elect not to do so, members of that unit may no longer meet and negotiate on an individual basis.)

4. Present a grievance, at any time, to his employer, and to have his grievance adjusted without going to his exclusive representative, as long as the adjustment is made prior to any arbitration provided for in the collective bargaining agreement and provided the adjustment of the grievance is not inconsistent with the terms of the written agreement.

   But, the public school employer cannot resolve the grievance directly with the grievant until the exclusive bargaining representative, if there is one, has received a copy of the grievance AND the proposed resolution, and he has had an opportunity to file a response if he wants to.

B. Unless and until an employee organization is recognized or certified as the exclusive representative of an appropriate unit, the individual employee organizations have the right to:

1. Represent their members in their employment relations with the school employer (Government Code Section 3543.1). Once the unit has a recognized exclusive representative, however, only that employee organization selected as the exclusive representative may represent the employees in that unit.

2. Access at reasonable times to areas where employees work, the use of institutional bulletin boards, mailboxes and other means of communication, SUBJECT TO REASONABLE REGULATIONS.

3. Use of institutional facilities, at reasonable times, for the purpose of meeting concerning the exercise of rights guaranteed by this law. (They cannot, therefore, use school facilities to discuss striking which is not a "right guaranteed by this law.")

4. Release time for a "reasonable" number of representatives of the exclusive bargaining agent, without loss of pay, when in the process of "meeting and negotiating" and for processing grievances. (Defining "reasonable" will cause some trouble.)

5. Have their dues deducted under Education Code Sections 13532 and 13604.2 UNLESS AND UNTIL one of the organizations is recognized as the exclusive bargaining agent. At that time only dues for the exclusive representative may be deducted from wages.

6. The exclusive employee organization then has the duty to make disclosures of its financial transactions by filing a detailed written report annually with the EERB and its members in the form of a balance sheet and operating statement (Government Code Section 35465).

VIII. THE SCOPE OF MEET AND NEGOTIATION (Government Code Section 3543.2)

A public school employer, or his designee (who may be certificated or classified) shall meet and negotiate with only representatives of that organization selected as the exclusive representative of an appropriate unit with regard to matters within the scope of representation.

The scope of such negotiations is limited to the following and all matters not enumerated are reserved to the public school employer:

A. Wages.

B. Hours of employment.

C. Other terms and conditions of employment, limited to the following:

1. Health and welfare benefits (Government Code Section 53200).
2. Leave and transfer policies.
3. Safety conditions of employment.
4. Class size.
5. Procedures to be used for employee evaluation.
6. The type of organization security to be selected.
7. Grievance procedures (Government Code Sections 3548.5,6,7,8).

Additionally, a certificated employee organization which is the exclusive bargaining agent has a right to be consulted on the definition of educational objectives and course and curriculum content and textbook selection. (It should be noted that these items were originally included in the scope of meet and negotiate. They were eliminated in the final form of the bill and therefore, are relegated to a lesser role than those items that are negotiable.)

All other matters not specifically enumerated are reserved to the public school employer and may not be the subject of "meet and negotiate" although the employer may, if he wishes to, consult with his employees or their organizations on such other matters.

IX. CERTIFICATION OF EXCLUSIVE BARGAINING AGENT (Government Code Section 3544)

A. Procedure to be followed by employee organizations wishing to become exclusive representatives.

1. Employee organization first files a request to be recognized as such with the public school employer.

2. The request must state that: a) a majority of the employees in the unit designated by them wish to be represented by them; b) the request must contain proof of majority support; and c) a detailed grouping of jobs which constitutes the unit.

3. Notice of such request is then posted on all employee bulletin boards where members of the unit are employed.

4. The employer then grants the request unless: (Government Code Section 3544.1)

a. The employer desires an election on the issue or challenges the appropriateness of the unit. The employer has but to make such a request of the EERB which shall then conduct a representative election.

or

b. Another organization files a similar request or challenges the appropriateness of the unit within 15 working days of the posting. If the claim of the challenger is supported by at least 30% of the membership of the unit, the employer shall request that the EERB hold a representative election.

or

c. If there is currently in effect a lawful agreement covering some of the same employees in the unit. (However, a request filed between 90 and 120 days before the expiration of an agreement shall be honored.)

or

d. There is another organization recognized as the exclusive bargaining agent and that recognition was granted within the previous 12 months and covers some of the same employees included in the petitioner's unit.

B. Procedure for employees, without an organization.

1. If, by January 1 of any school year, no organization makes the request, a majority of employees in a unit can petition the employer for a representative election. The employee does not have to be a member of any employee organization to sign such a petition.

2. When an employee group files such a petition, the employer must post same on all the bulletin boards where the members of the unit may be employed and organizations have 15 working days to apply to be put on the ballot. The organizations must prove the support of at least 30% of the workers in the unit to get on the ballot.

3. At the end of the 15 working days, the employer forwards the petition and the names of all organizations that qualified to the EERB. (Government Code Section 3455.3.)

C. Challenging the determination.

1. A petition may be filed with the EERB by employer or employee organizations (according to rules and regulations to be set up by the Board) requesting it to decide whether the determination of the exclusive representative or the appropriateness of a unit is proper.

X. ORGANIZATIONAL SECURITY (Government Code Sections 3546 and 3546.5)

A. Defined: A means whereby an employee organization which assumes the position of exclusive representative for a bargaining unit receives financial support from the employees therein.

B. Forms of Organizational Security:

1. The employee may decide whether or not to join an organization, but if he does decide to join, he must, AS A CONDITION OF CONTINUED EMPLOYMENT, remain a member for the duration of the written contract (or give notice within thirty (30) days following its expiration that he wishes to resign from membership).

2. The employees may elect an arrangement that requires an employee, AS A CONDITION OF CONTINUED EMPLOYMENT, either to join the certified organization or pay that organization a "service fee." The service fee, if plan (2) is selected, may include the standard initiation fee, plus periodic dues, plus general assessments of the organization for the duration of the agreement, or three (3) years, whichever is less. The service fee may not exceed the total of items listed.

C. Selection of Type of Organizational Security:

1. The selection of a form of organizational security is within the scope of meeting and negotiating.

2. The school employer may request that the question of organizational security be voted on separate and apart from the remainder of the proposed agreement.

3. Both parties must agree to the security arrangement.

4. A majority vote is needed to adopt or terminate the form of organizational security selected.

5. Organizational security is not required. The exclusive unit may select either form of organizational security or vote for none at all.

XI. MISCELLANEOUS INFORMATION ON COLLECTIVE BARGAINING

A. Public Presentation of Employee Organization Proposals (Government Code 3547): In 1975, Assembly Bill 4114 proposed by the League of Women Voters, added Section 13089 to the Education Code. It provided for a public presentation by the employee organization of all of its original proposals and a time period during which the public could become involved in the meet-and-confer process. Most of the provisions of Assembly Bill 4114 have been retained in the collective bargaining enactment.

B. Impasse Procedures (Government Code Section 3548):

1. Either the employer or the employee may declare an impasse and require the EERB to appoint a MEDIATOR to assist in resolving the controversy. (This section does not prevent both sides from agreeing on and selecting their own mediator.)

2. If the matter is still not resolved after 15 days, either party may request FACT FINDING in accordance with procedures set forth in Government Code Section 3548.2.

   If the fact finders fail to achieve a settlement within 30 days, the fact finders may make advisory findings of fact and recommendations for settlement.

C. Arbitration (Government Code Section 3548.5):

The written collective bargaining agreement may provide for arbitration of disputes as may arise involving interpretation, application, or violation of the agreement.

The agreement may provide for binding arbitration. (This is a "first.")

The agreement may provide its own procedures for arbitration or contain a provision to be bound by the EERB procedures.

D. Right to Strike (Government Code Section 3549):

The act provides that nothing therein shall be construed to make Labor Code Section 923 applicable to public school employees.

The act provides that an agreement negotiated as a result of a strike is nevertheless valid.

E. Brown Act/Bagley Act (Open Meetings) (Government Code Section 3549.

Negotiations, mediation, fact finding, arbitration, and meetings between school boards and their negotiator on any matter within the scope of meeting and negotiating are exempt from application of the acts.

CONCLUSION

WHEN THE ENTIRE PROCESS OF COLLECTIVE BARGAINING IS COMPLETED AND THERE IS STILL AN IMPASSE, THE PUBLIC SCHOOL EMPLOYER HAS THE RIGHT TO MAKE THE FINAL DECISION WITH REGARD TO ALL MATTERS WITHIN THE SCOPE OF MEET AND NEGOTIATE. (Government Code Section 3549.)